* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Pronounced on: 17th March, 2025***

\+ **I.A. 20538/2014** (*Application under Section 151 CPC read with the Limitation Act for Condonation of Delay*) **& I.A.20535/2014** (*Application under Section 151 XPC read with Section 44 of the Evidence Act for setting Aside Compromise Decree Dated 28.03.2003*) **in CS(OS) 749/1994** along with **I.A. 20536/2014, I.A. 20537/2014, I.A. 20539/2014, I.A. 20540/2015, I.A. 21460/2014, I.A. 21462/2014, I.A. 7353/2020 and I.A. 2487/2022**

AJAY RELAN
S/o Shri N.D. Relan
C/o M/s Sharda Motor Industries Limited,
B-23A, Okhla Industrial Area Phase I,
New Delhi. .....Plaintiff

Through: Mr. Sudhir Makkar, Senior Advocate with Ms. Meghna Mishra, Mr. Tarun Sharma, Ms. Palak Sharma, Ms.Yashodhara Gupta & Ms. Saumya Gupta, Advocates

Versus

(1) PRANAY SOMAIA
s/o Late Sh. K.D.Somaia

(2) ILA VASANI,
d/o late Sh. K.D. Somaia

(3) DIPTI POOJARA
d/o late Sh. K.D. Somaia

(4) SUJATA MORAJARIA
d/o late Sh. K.D. Somaia

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(5) M/S DURGA BUILDERS PVT. LTD.
Having its Registered Office
At 609-610, Inderprakash, 21,
Barakhamba Road, New Delhi

(6) RAVINDER KUMAR NANDA
s/o Sh. Dev Raj Nanda
resident of B-5, Geetanjali, New Delhi

(7) PROMOILA NANDA
w/o Sh. Ravinder Kumar Nanda
R/o B-5, Geetanjali, New Delhi

.....Defendants

Through: Mr. Siddharth Yadav, Senior Advocate with Mr. Wasim Ashraf & Mr. Narinder Lodiwal, Advocates for defendants No.1 & 2

Mr. Satvik Verma, Mr. Sachin Dubey, Mr. Manuj Syal, Mr. Mohit Jain, Mr. Mudit Marwah, Mr. Rahul Mohan Gautam & Mr. Sukesh Tyagi, Advocates for defendant No.5

\+ **EX.P. 92/2019, EX.APPL.(OS) 682/2020, EX.APPL. (OS) 3214/2022, EX.APPL.(OS) 3619/2022 & EX.APPL. (OS) 3620/2022**

AJAY RELAN .....Plaintiff

Through: Mr. Sudhir Makkar, Senior Advocate with Ms. Meghna Mishra, Mr. Tarun Sharma, Ms. Palak Sharma, Ms.Yashodhara Gupta & Ms. Saumya Gupta, Advocates

Versus

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CE CONSTRUCTION LTD. .....Defendant

Through: Mr. Gaurav Kumar, Mr. Abhishek Handa & Mr. Rahul, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 20538/2014 (*under Section 151 CPC read with Limitation Act, 1963 on behalf of Defendant No.5 seeking Condonation of Delay*)

1. The present Application dated 13.10.2014 has been filed by D***efendant No. 5- DBPL*** through its Director-Divij Mehra for condonation of delay in filing IA No. 20535/2014 to seek recall of the Compromise Decree dated 23.03.2003.

2. It is submitted in the Application that the Compromise Decree dated 23.03.2003 has been challenged on various grounds, including that it was *nullity in law on account of lack of inherent jurisdiction, fraud and collusion* between the compromising parties and lack of authority of Sh. R.K.Nanda, in taking part in the proceedings on behalf of DBPL.

3. Reliance has been placed upon Supreme Court's decision in *Kiran Singh Vs. Chaman Paswan* AIR 1954 SC 340 wherein it has been held that an Order passed without jurisdiction is a nullity *ab initio void* as if *non est* which can be challenged at any time or at any stage of that or other proceedings. Furthermore, *where the Suit is in nullity on account of fraud*,

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then it can be challenged at any time *de hors* the limitation. Therefore, the original concept of limitation, does not apply.

4. The present Application for condonation of delay has been filed as a measure of abundant caution to seek the intervention of this Court to decide the Company Application, in the interest of substantive justice.

5. Furthermore, even if it is assumed, without admitting, that jurisdiction was conferred upon the Court by the consent of the parties who were party to the Compromise Decree, the judicial authority which is without any jurisdiction, cannot become valid merely by consent of the Parties.

6. Reliance is placed upon decision in *Vithalbhai (P) Ltd. Vs. Union Bank of India* (2005) 4 SCC 315 to assert that no amount of waiver or consent can confer jurisdiction on a court which lacks jurisdiction.

7. Similar observations were made by the Supreme Court in *Budhia Swain Vs. Gopinath Deb* (1994) 4 SCC 396.

8. It is further explained that the Applicant-Company was unable to approach this Court earlier as it was awaiting the outcome of the proceedings before the Company Law Board which ultimately culminated *vide* Order dated 11.03.2014.

9. Even otherwise, owing to the *mala fide* of some of the Respondents, the Applicants have been involved in numerous hearings before the Company Law Board, before this Court under Section 340 Cr.P.C. and also the Hon'ble Supreme Court in various criminal proceedings before various Courts, including investigations by the Delhi Police and other litigations. Thus, multiple litigations prevented the Applicants from preferring the accompanying Application earlier because the time and resources had to be

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spent on the above matters, which were equally vital. On this ground as well, there is just and sufficient cause in filing the present Application.

10. The Applicants have further placed reliance upon decision in *Sree Rajendra Mills Ltd. Vs. IOCEE Exports Ltd.* 2011 3 Co, LJ 235 Madras, wherein while condoning the delay of 1,392 days, it was observed that if the explanation does not smack of *mala fides* or it is not put forth as part of dilatory strategy, the Court concerned must show the utmost consideration for the Suitor.

11. The Applicants were not a party of any kind of *mala fide* strategy, nor had they indulged in any dilatory strategy; the Application has been moved at the earliest and their interest would be squarely jeopardized if the impugned Order continues to stand. The Supreme Court has observed that an Order which is in nullity, may be ignored by all concerned and it is only when "*the shoe pinches*", that it may be agitated at the appropriate forum even in collateral proceedings.

12. Reliance has also been placed upon decisions in *Mandeep Singh Vs. Santosh Sharma* 2018 SCC OnLine Del 12754; and *Satyawan Vs. UOI & Ors.* 2015 SCC OnLine 12757.

13. Reliance is placed on *Mehboob Sahab v. Syed Ismail & Ors.* (1995) 3 SCC 693 wherein the Apex Court has observed that if a party obtains a decree from the Court by practicing fraud or collusion then he cannot be allowed to take the defence that the matter is *res judicata* and cannot be reopened.

14. Further reliance is placed on *Ram Chandra Singh v. Savitri Devi & Ors.* (2003) 8 SCC 319; *Hamzi Haji v. State of Kerala* AIR 2006 SC 3028;

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AV Papayya Sastry & Ors. v. Government of AP & Ors. AIR 2007 SC 1546; *Ram Kumar v State of UP & Ors.* 2022 SCC OnLine SC 1312; *Bilkis Yakub Rasool v. Union of India* 2024 SCC OnLine SC 25; *Devas Multimedia Pvt. Ltd. V. Antrix Corporation* (2023) 1 SCC 216; and *SP Chengalvaraya Naidu (Dead) by LRs v. Janannath (Dead) by LRs* (1994) 1 SCC 1 to support their proposition that fraud vitiates every solemn act.

15. It is thus, contended that the Applicant has vital stakes to be protected by the present Application and irreparable injury and harm would be caused if this Application is not allowed. Moreover, there is no conscious delay in filing the accompanying Application and the delay has not been intentional, but due to the circumstances mentioned above.

16. Reliance is placed on *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma* (2008) 8 SCC 321 wherein the Apex Court has observed that condonation of delay is a *matter of discretion of the Court* as Section 5 of *Limitation Act* does not say that such discretion can be exercised only if the delay is within a certain limit. Acceptability of explanation for the delay, is the only criterion.

17. Further reliance is placed on *Ram Nath Sao Alias Ram Nath Sahu and Ors v. Gobardhan Sao and Ors.* (2002) 3 SCC 195; *Krishna Bahadur Lal v. Gyanendra Pratap and Ors.* 2024 SCC OnLine SC 508; *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nagar Academy and Ors.* (2014) 2 SCC (LS) 595; *Uttarakhand Transport Corporation v. Ram Sakal Mahto & Anr.* 2012 SCC OnLine Del 1261; *Mandeep Singh v. Santosh Sharma* 2018 SCC OnLine Del 12754; *Satyawan v. Union of India & Ors.* 2015 SCC OnLine 12757; and *Rajiv Agarwal v. Balmer Lawrie Co.*

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Ltd. 2023 SCC OnLine Del 8106 to reiterate that only "sufficient cause" is required for condonation of delay under Section 5 of the *Limitation Act, 1963*.

18. It is, therefore, submitted that the accompanying Application for Recall of the Compromise Decree, be heard on merits and declare the said *Decree as nullity in law*.

19. ***The Respondent Ajay Relan (Plaintiff in the main Suit) in his Reply*** has asserted that the present Application is a blatant example of abuse of process of law in seeking recall of the consent Decree dated 28.03.2003. It is claimed that from the entire record it is evident that the alleged fraud as claimed by the Applicant, was *well within his knowledge since 1987 and at best since 2003* and that for dishonest reasons, Applicant has not disclosed the date of knowledge of the alleged fraud. No explanation whatsoever has been given for the delay and thus, the only inference that can be drawn is that there is no *bona fide* reason but the delay is due to the recklessness, negligence and dishonest act of the Applicant.

20. *It is further submitted* that Article 59 of the Schedule to *Limitation Act, 1963* provides that all Suits to set aside a Decree on fraud, has to be filed within a period of three years. The point of commencement of this limitation is the date from which the party gains the knowledge of the fraud.

21. Learned counsel on behalf of the Respondent has contended that the Applicant was all throughout aware of the Compromise Decree and in any case since 2003, when the Execution Petition in respect of the Compromise Decree got filed, despite which the present Application to challenge the Compromise Decree has been filed only in 2014. It is claimed to be patently

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barred by limitation.

22. Furthermore, he has approached the Court with unclean hands, dishonest intention and no liberty was taken by the Applicant while withdrawing the previous Application I.A. No.18011/2014 seeking the same relief. Hence, the principle of *res judicata* bars the present Application.

23. Even otherwise, new facts are sought to be brought in by virtue of this Application, which do not pertain to the Plaintiff and has no bearing on the adjudication in the present dispute. At best, it proves *inter se* dispute between the Applicant – DBPL represented through Divij Mehra and his father Arun Mehra, and CE Construction i.e. defendants No.5 to 7. The present proceedings cannot be used to adjudicate *inter se* disputes between them. The Plaintiff-Ajay Relan is not even a party to the *inter se* litigation between the Defendants.

24. ***Learned counsel on behalf of the Plaintiff/ Decree Holder Ajay Relan*** (non-Applicant) has further contended that the present Application is barred by limitation. On bare reading of the contents of the Application, it is evident that allegations of fraud made on behalf of Defendant No.5, were well within the knowledge of the Applicant since the year 1997 and at best, 2003. For dishonest reasons, the Applicant has not disclosed the date of alleged fraud either in the Application seeking condonation of limitation or the main Application. The present Application is, therefore, barred by delay and laches for which there is no cogent explanation.

25. The Application, therefore, is not maintainable insomuch as it fails to disclose the date of knowledge of alleged fraud and no explanation

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whatsoever has been given to explain the delay. The Application is therefore, sought to be rejected.

26. The ***Applicant/ Defendant No. 5-DBPL through Divij Mehra*** has denied that this alleged fraud, was ever within the knowledge of DBPL through him.

27. **Submissions Heard and Record Perused.**

28. The *Applicant/Defendant No. 5-DBPL through Divij Mehra* has contended that the impugned judgment dated 28.03.2003 is a nullity on account of fraud and lack of inherent jurisdiction. It is argued that where a judgment is a nullity in law, it can be challenged at any time, de hors the period of limitation for which reliance has been placed on the case of *Kiran Singh* (supra) wherein the Apex Court had observed that whenever and wherever a Decree has been passed by the Court without jurisdiction is nullity then it can be challenged even in collateral proceedings including the execution.

Distinction between Fraud and Nullity

29. First and the foremost, it is significant to understand the distinction between a judgment claimed to be a *nullity* and that which is stated to be vitiated on account of *fraud.*

30. In the case of *Kiran Singh* (supra), it had been explained that where the judgment is passed by a Court without inherent jurisdiction, it is a nullity. However, when there is a defect of jurisdiction, whether pecuniary or territorial or in respect of subject matter of the action which strikes at the very Authority of the Court to pass any Decree, such defect cannot be cured even with the consent of the parties.

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31. On the other hand, fraud is an extrinsic collateral act which vitiates the most solemn proceedings of the Courts of Justice, as has been held in the case of *Mahboob Sahab vs. Syed Ismail & Ors.* (1995) 3 SCC 693. Once, it is established that the Order was obtained by a successful party by practicing or playing fraud, it stands vitiated and such Order cannot be held legal, valid or in consonance with law. It is non-existent and *non-est* and cannot be allowed to stand.

32. Referring to *Lazarus Estates Ltd. vs. Beasley* (1956) 1 All ER 341, the Apex Court in *S.P. Chengalvaraya Naidu vs. Jagannath* (1994) 1 SCC 1 which was followed by Division Bench of this Court in *Devas Employees Mauritius Pvt. Ltd. vs. Antrix Corporation Ltd*. 2023 SCC OnLine Del 1608, held that a judgment vitiated by a fraud, must be treated as a nullity by every Court. In *State of Maharashtra vs. Prabhu* (1994) 2 SCC 481 the Apex Court noted that the most solemn precedent in any civilized jurisprudence, is that fraud and collusion and justice never dwell together (*fraus et jus nunquam cohabitant*).

33. Having discussed the distinction between fraud and nullity, the ***second aspect*** which needs to be considered is *whether the Compromise Decree challenged in the present case, is non-est on the ground of nullity or is vitiated on the ground of fraud*. It is not as if the judgment has been passed by a Court with no inherent jurisdiction, but it is essentially a case of fraud which is pleaded by the Defendant No. 5-DBPL through Divij Mehra on the ground that the Compromise Decree was executed on behalf of DBPL through R.K. Nanda who in fact, had no authority to represent the Company and also that the Compromise Application did not bear the

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signatures of all the parties to the Suit. ***From the averments so made, it is evident that it is not a case of nullity on which the Compromise Decree has been sought to be avoided, but fraud.***

34. Having so concluded, the ***next aspect*** which assumes significance is that to challenge a Decree on the ground of fraud, Application is necessarily required to be filed within a period of three years from the date of knowledge, in terms of A. 59 of Schedule to *Limitation Act, 1963*. The Application for setting aside the Judgement cum Compromise Decree dated 28.03.2003 has been filed on 13.10.2014. What needs to be reckoned is the date from which the period of limitation is to be calculated and if barred by limitation, is whether there exists sufficient grounds for condonation of Delay.

35. The Applicant has explained that even though the Compromise Decree had been executed with the consent of DBPL through R.K.Nanda, but there was a dispute whether Arun Mehra became the Director of the said Company. Even though there was an Agreement dated 19.05.1997 for transfer of shares of DBPL in favour of Arun Mehra, but that Agreement never got implemented.

36. The validity of the Agreement got challenged by R.K. Nanda by way of a *Civil Suit No. CS(OS)961/2004* dated 06.09.2004, which ultimately got dismissed for want of evidence on 30.1.2009.

37. Furthermore, to assert that Arun Mehra had assumed the Directorship of DBPL, he had filed ***Company Petition No. No.54/2005 (CLB)*** in 2005 asserting that he has become the Director of DBPL having purchased the entire share holding of the Company from R.K. Nanda and Promila Nanda

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the two erstwhile Directors of DBPL. However, the Company Law Board in its judgment dated 02.02.2006 declined to accept Arun Mehra as a Director and dismissed the Company Law Petition.

38. Thereafter, the ***Company Appeal (Co. Apl. (SB) No.7/2006)*** was filed, but it also got dismissed *vide* Order dated 30.10.2006, by this Court by observing that all the issues raised on behalf of Arun Mehra shall be decided in CS(OS) 961/2004 (a suit filed by R.K. Nanda to challenge the validity of the Agreement dated 19.05.1997).

39. Arun Mehra filed ***SLP (Civil) No.20293/2006*** against the Order in dated 30.10.2006 *vide* which his Appeal got dismissed, but there also he did not succeed.

40. After the ***Civil Suit 961/2004*** filed by R.K. Nanda got dismissed *vide* Judgment dated 30.01.2009, Shri Arun Mehra filed a fresh Suit CS (OS) 354/2009 seeking Mandatory and Permanent Injunction against the Nanda's for acting for and on behalf of DBPL. However, this Suit got dismissed on 22.02.2010 under Order VII Rule 11 CPC.

41. Against the dismissal of his Suit, Arun Mehra preferred an *Appeal vide RFA (OS) 62/2010* wherein it was observed that there was no controversy regarding the binding nature of the Agreement dated 19.05.1997, and it was disposed of by allowing the Appeal in its judgment dated 26.07.2013.

42. Once, the observation came from the Court recognising the validity of the Agreement dated 19.05.1997, Arun Mehra again filed a *Company Petition No. 112/2013(CLB)* in 2013 seeking rectification of the Register of Companies, to reflect the names of true and legitimate owners of DBPL,

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which got allowed on 11.03.2014 and the names of the correct owners were directed to be mentioned in the Register of Members in terms of the Agreement dated 19.05.1997.

43. This entire chain of litigation clearly reflects that Arun Mehra may have been aware of the Compromise Decree of 2003, but he had no *locus standi* to challenge the same as his name was registered in the Register of Members, only pursuant to the Order dated 11.03.2014 of CLB. He acquired the locus to challenge the judgment for and on behalf of DBPL for the first time only in 2014 when his name got entered in the Register of Members. Before then, even though he was aware of the Compromise Decree dated 28.03.2003, but there was no cause of action in his favour and he did not have the requisite locus to challenge the Decree on behalf of DBPL. Unless he assumed the position of Director in DBPL, he could not have possibly challenged the Decree. Therefore, the limitation period for him to challenge the Compromise Decree arose pursuant to CLB Order dated 11.03.2014.

44. The present Application has been filed on 13.10.2014 i.e. well within the limitation period of three years. Therefore, in the light of the aforesaid discussion it is held that the Application has been filed within limitation but if there is any delay, the same stands condoned in the light of multiple litigations undertaken to get the tile established as Director of DBPL.

45. The Application is accordingly disposed of.

I.A. No. 20535/2014 (*under Section 151 CPC read with Section 44 of the Evidence Act on behalf of the Defendant No.5 Company seeking Recall of the Collusively obtained Order/Judgment-cum-Decree dated 28.03.2003*)

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46. The present Application dated 13.10.2014 on behalf of Defendant No.5-***M/s Durga Builders Pvt. Ltd. (henceforth referred to as the "DBPL"), through its Director Divij Mehra,*** has been filed under Section 151 of the *Code of Civil Procedure, 1908* ('CPC' *hereinafter*) read with Section 44 of the *Indian Evidence Act*, *1872* seeking recall of the Judgment-cum-Decree dated 28.03.2003 on the ground of *fraud and lack of jurisdiction*.

47. Originally, Suit **No.749/1994** was filed by the Plaintiff/Decree Holder-Ajay Relan against Defendant No.1 to 4, being Legal Heirs of Sh. K.D. Somaia; Defendant No.5-DBPL; Defendant No.6- Ravinder Kumar Nanda ('*R.K.Nanda*') and his wife Defendant No.7- Promila Nanda, the two Directors of Defendant No.5, to seek *Specific Performance of Agreement to Sell dated 30.04.1993* entered between the Plaintiff and Defendant No.5 Company through its Director, R.K.Nanda Defendant No.6. The Suit was decreed *vide* Judgment dated 28.03.2003 on the basis of compromise between the Plaintiff and Defendant No.5 *through R.K. Nanda.*

48. *Execution No.321/2003* was filed by the Plaintiff/ Decree Holder in which eventually, the Conveyance Deed dated 23.07.2010 was executed in favour of the Plaintiff, though the Second Floor portion continued to be in possession of *M/s CE Construction Ltd* ('CECON').

49. The Division Bench in EFA (OS) 05/2008, had *vide* Order dated 20.02.2008, directed that in case CECON succeeds in its Appeal, the Decree Holder/ Plaintiff- Ajay Relan would have the registration of the Sale Deeds in his favour, cancelled.

50. *The Objections have been filed on behalf of Defendant No.5-DBPL*

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through its present Director Sh. Divij Mehra, for setting aside the Compromise Decree dated 28.03.2003, essentially on the following grounds:-

(i) That the Compromise Decree was a consequence of criminal conspiracy between Mr. Sharad Kumar Aggarwal, erstwhile Advocate of DBPL, Ajay Relan, the Plaintiff and R.K. Nanda - Defendant No.6, who had fraudulently projected himself as the Director of the Applicant Company and entered into collusive Compromise Decree. Pursuant to the Compromise *inter se* Defendant No.5 and Ajay Relan, it was agreed that Rs.10 lacs shall be paid to *M/s Kumar Security Syndicate*. Though, there was no plausible reason for Ajay Relan, the buyer, to have paid Rs.10 lacs to *M/s Kumar Industrial Syndicate* (of which Sharad Kumar Aggarwal was a Director) was out of the money payable to the Company. It is claimed that the Compromise Decree was the consequence of a collusion orchestrated and coordinated between Sharad Kumar Aggarwal and Defendant No.6 – R.K. Nanda.

(ii) That the consent Decree is bad in law, in the absence of the signatures Defendants No.2 to 4 and also the forged signatures of Mrs. Promila Nanda, defendant No.7, on the Compromise Application under *Order XXIII Rule 3 of Code of Civil Procedure, 1908, which got filed* at the stage of evidence.

(iii) It is further asserted that the Compromise Decree on behalf of the DBPL the owner of the suit property, was entered into by Defendant No.6 R.K. Nanda, claiming to be its Director,

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even though he had no legal authority to represent DBPL.

51. It is further explained that there was a huge conspiracy entered into between Defendant No.6-Sh. R.K. Nanda with his Counsel Sh. Sharad Kumar Aggarwal, which is evident from the fact that Rs.10 Lacs, out of the entire Sale Consideration, was directed to be credited in the name of *M/s Kumar Industrial Syndicate*, operated by the Counsel. This Firm had no role whatsoever to play in the transfer of the property and the part sale consideration could not have been directed to be transferred in its account. The said term of the Compromise clearly reflects an active connivance and collusion of the parties to the Compromise.

52. The Conspiracy between Defendants No.6 & 7, was revealed by Sh. Sharad Kumar Aggarwal, Advocate in ***Suit CS(OS) 689/2011.***

53. Furthermore, in the Suit, the legal heirs of Original Owner i.e. Sh. K.D. Somaia, had been impleaded as Defendant No.1 to 4, but none of these legal heirs had signed the Compromise Application nor were their statements recorded. Also, the signatures of Promila Nanda were forged on the Application. Therefore, it emerges that the Compromise Decree has been made without the consent and without the presence of all the parties to the Suit.

54. It is further asserted that the issue of lack of authority and fraud played by Defendants No.6 & 7 with Defendant No.5-DBPL, has not been adjudicated by any Court till date and consequently, this Application has been filed for setting aside of the Compromise Decree dated 23.08.2003.

55. Learned counsel for the Applicant has placed reliance upon <u>*Anil*</u>

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Kumar Bindal Vs. Director General of Income Tax & Ors.(2002) 174 CTR(Del) 376; *Kamlesh Singh Vs. State Of Uttar Pradesh And Anr.* 1997 CriLJ 2705 and *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others* AIR 1996 SC 722.

56. Reliance has been placed on *Amro Devi & Ors. v. Julfi Ram* C.A. No. 07791-007791 of 2024 in SLP (C) No. 14690/2015; *Som Dev & Ors v. Rati Ram and Anr.* (2006) 10 SCC 788 to submit that a valid compromise in a Suit, has to be a lawful agreement for compromise in Writing and signed by the parties who would then prove it to the satisfaction of the Court.

57. Further reliance is placed on *Kamla Devi v. Prabhat Chand* 1997 SCC OnLine Del 146 to submit that under Order 23 Rule 3 CPC, written compromise signed by all the parties, is mandatory. Similar observations have been made in *P. Ganapathi v. S. Balasarawathi* 2015 SCC OnLine Mad 9747.

58. ***Plaintiff-Ajay Relan has submitted in his Reply and it has also argued by the Learned Counsel on his behalf*** that this Application filed by Mr. Divij Mehra on 13.10.2014 i.e. 11 years after the consent Decree, claiming himself to be the Director/ New Management of Defendant No.5-DBPL, is without any substance.

59. It is asserted that the *Suit for Specific Performance* was filed by the Plaintiff- Ajay Relan in 1994, which got amicably settled after nine years and a consent Decree dated 28.03.2003, was passed.

60. As per the Compromise Decree, the Plaintiff/Decree Holder paid a sum of Rs.1.80 Crores to Defendant No.5-DBPL in the manner as detailed in the Application under Order XXIII Rule 1 & 3 of CPC.

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61. In **EP No.321/2003,** a Local Commissioner was appointed *vide* Order dated 08.02.2008, who found that the First Floor was in possession of CECON. The Objections were filed on behalf of the CECON. Pertinently, the Management of CECON is claiming to be the new Management of Defendant No.5-DBPL.

62. Mr. Arun Mehra had also appeared in Execution Petition No.321/2003. The issue of fraud, as was alleged by Arun Mehra on behalf of CECON, was decided in favour of the Plaintiff Ajay Relan by a detailed judgment dated 04.01.2008. It was held by this Court that the Applicant-CECON had no title in respect of the Suit Property and the Will was not probated and the Power of Attorney was not registered.

63. Further, in Execution Petition No. 321/2013, Mr. Arun Mehra tried to create obstruction in the Execution of the Sale Deed and a Local Commissioner was appointed to do the needful. Personal appearance of Mr. Arun Mehra was directed by this Court, who appeared on 13.03.2009 and tendered unconditional apology for creating obstruction for DDA in carrying out the inspection in the Suit Property.

64. In ***EFA (OS) 5/2008*** filed against the Order made in the Execution Petition No. 321/2003, parties were directed to maintain *status quo* with respect to the possession by Order dated 05.02.2008. However, the Sale Deed has been permitted to be executed in favour of the Decree Holder *vide* the same Order.

65. An ***SLP 11619/2008*** was filed by CECON through Mr. Arun Mehra against the interim Order dated 07.04.2008, but the SLP was also dismissed *vide* Order dated 13.05.2008.

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66. Also, CECON through its Managing Director, Arun Mehra filed a ***Suit CS(OS) No.1358/2005*** on 29.09.2005 seeking cancellation of the Agreement to Sell dated 30.04.1993 executed between DBPL and the Plaintiff. An Application being IA No. 9719/2005 under Order VII Rule 11 CPC was filed by the Plaintiff for rejection of the Suit, which was allowed *vide* Order dated 16.05.2007, and the Suit was rejected.

67. ***CECON also filed RFA (OS) 78/2008 on 11.11.2008*** to challenge the Order dated 16.05.2007 made in CS(OS) 1358/2005, but the Appeal was dismissed on 10.09.2010 with cost of Rs.50,000/- . The Division Bench held that *in the above analysis, we dismiss the Application since it is mala fide and vexatious and endeavours only to open another legal front. It is dismissed with costs of Rs.50,000/-.*

68. ***It is thus, asserted that the present Application is barred*** **on the ground of *res judicata.***

69. It is further asserted that the ***earlier IA 18011/2014*** with same Prayer was filed on 11.09.2014, which had been withdrawn by the Applicant, but no liberty was taken while withdrawing the Application. Once the liberty has not been taken, the second Application is not maintainable and is barred by ***Order II Rule 2 CPC***.

70. It is further argued that the mischief in the action of the Applicant is writ large from the fact that the present Application has been filed through Mr. Divij Mehra, son of Mr. Arun Mehra, making stale allegation which has been adjudicated by various Orders. The Applicant has failed to comply with the Order dated 17.10.2014 passed by this Court.

71. ***Learned counsel on behalf of the Plaintiff/ Decree Holder Ajay***

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Relan (non-Applicant) has further contended that the present Application is the gross abuse of the process of the law and the applicant has approached the Court with unclean hands. This Court *vide* Order dated 17.10.2014 had given the following directions to the Applicant:-

> *(i) "The Applicant shall file and affidavit giving details of the amount of Rs.2,40,00,000/- received from time to time to show how the amount was utilized;*
> *(ii) The applicant shall also give details of the Managing Director and Directors of Durga Builders Pvt. Ltd. since 1993 till date;*
> *(iii) The balance sheets of Defendant No.5 for a period of three years starting from the year 01.04.1992 and then for a period of three years starting from 01.04.2002, shall also be filed by the applicant."*

72. However, despite enumerable opportunities, the Applicant has failed to comply with this Order and none of these queries have been answered by the Applicant. The Balance Sheets have also not been filed due to dishonest and deliberate reasons.

73. In the ***Written Submissions/Short Note filed on behalf of the Plaintiff-Ajay Relan*** it is submitted that the period of challenging a decree obtained by fraud is three years from the date of discovery of the fraud for which reliance is placed on *Mohd. Noorul Hoda v. Bibi Raifunnisa* (1996) 7 SCC 767; *Mamta Dhawan v. Naresh Dhawan* 2017 SCC OnLine Del 11037; *Banita Choudhury v. Subrata Pati* AIR 2015 (NOC 748) 280; and *Raj Kumar Rawala v. Manabendra Banerjee* 2003 SCC OnLine Cal 626. Further reliance is placed on *Enviro-legal Action v. Union of India and Ors. (2011) 8 SCC 161 and M. Nagabushana v. State of Karnataka* (2011) 3 SCC 408 to assert that according to the doctrine of res judicata, a proper trial by a

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court of competent jurisdiction should be regarded as final and conclusive determination of the question litigate and should forever set the controversy to rest.

74. It is, therefore, argued that the present Applicant is without merit and is liable to be dismissed.

75. ***DBPL/Defendant No. 5 in its Written Submissions*** has stated that Fraud vitiates all proceedings and the orders obtained by fraud are *non-est* and the principle of *res judicata* does not apply, if proceedings are vitiated by fraud.

76. ***The Applicant has in its Rejoinder*** re-affirmed the assertions made in the Application under consideration.

77. **Submissions heard and Written Submissions along with the record, perused.**

78. *The present Application [I.A.20535/2014]* though has been filed under Section 151 CPC to challenge the Compromise Decree dated 28.03.2003, but pertinently it may be observed that it is in fact, an Application under Order XXIII Rule 3A CPC.

79. Reference be made in this regard to decision in *'Banwari Lal v. Chando Devi (Smt.) (Through LRS.) & Anr.*' (1993) 1 SCC 581, wherein it was expressed that amended Rule 3 of Order XXIII CPC provided that where it is alleged by one party and denied by the other party that an adjustment or satisfaction has been arrived at between the parties, '*the Court shall decide the question*' before which the Petition for compromise was filed and which had recorded such compromise; and decide the question *whether an adjustment or satisfaction has been arrived at on the basis of*

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any lawful agreement.

80. In the case of *Vipan Aggarwal and Another vs. Raman Gandotra and Others* in Civil Appeal No.3492/202, in SLP (C) No.20075/2021, dated 29.04.2022, the provisions under which the Compromise Decree was challenged, was considered. *It was observed* that to make an enquiry in respect of the validity of the Agreement or the compromise, the explanation to the Proviso to Order XXIII Rule 3 read with Rule 3A CPC states that an Agreement or compromise, '*which is voidable under the Contract Act, 1872*', shall be deemed to be lawful within the meaning of the said Rule. ***It was held*** that in view of the *Proviso* read with the Explanation, a Court which has entertained the Petition of compromise, has to examine whether such compromise was void or voidable under the *Indian Contract Act*. A party challenging a compromise, can file a Petition under *proviso* to Rule 3 of Order XXIII, or an Appeal under Section 96(1) of CPC, in which the validity of the compromise in view of Rule 1-A of Order 43 of CPC, can be questioned.

81. In the light of aforesaid provision of law, even though the Application has been filed under Section 151 CPC, but it is essentially under the Explanation to Order XXIII Rule 3 read with Rule 3A CPC.

Factual Background:

82. *To now appreciate the contentions of the Applicant*, it would be pertinent to refer to the ***factual background,*** which has prompted the filing of the present Application.

83. The property bearing No. S-23, Panchsheel Park, New Delhi, admeasuring 800 sq. Yards (*henceforth referred to as the* 'Suit Property'),

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was allotted on 13.12.1967 to one Sh. Balwant Singh by virtue of Perpetual Lease Deed executed in his favour by Panchsheel Cooperative Group Housing Building Society, allotted by the President of India. The rights in the Suit property were sold by Sh. Balwant Singh to Sh. K.D. Somaia, on 03.02.1979.

84. Sh. K.D. Somaia entered into Agreement to Sell dated 16.09.1992 with DBPL-Defendant No. 5 through its Director Mr. R.K. Nanda-Defendant No.6, in respect of the Suit property, for a sale consideration of Rs.2 Crores. Advance payment of Rs.21 Lacs was made, with the balance of Rs.1.79 Crores payable by 15.02.1993. Because of the shortage of the funds, Defendant No.5-DBPL, got the funds from *M/s CE Construction Limited Ltd.* (*henceforth referred to as "*CECON*"*) and paid the balance of Rs.1.79 Crores to Sh. K.D. Somaia in January, 1993.

85. In return of funds of Rs.1.79 Crores provided by CECON, Defendant No.5-DBPL put CECON into possession of the First Floor of the Suit property as well as common areas, such as driveways, servant quarters, toilets, lawn, staircase etc. Along with the possession, the original Title Deeds i.e. Sub Lease Deed dated 13.12.1967, the Share Certificate dated 13.05.1981, etc. were handed over to CECON.

86. Sh. R.K. Nanda being short on cash, acting as a Power of Attorney of Sh. K.D. Somaia, erstwhile Owner and as Director of Defendant No.5-DBPL, entered into an Agreement to Sell dated 30.04.1993 with the Plaintiff-Ajay Relan in respect of the Suit Property, for a sum of Rs.2.4 Crores. Advance of Rs. 60 Lacs was paid and balance of Rs.1.8 Crores was payable after obtaining clearance from Income Tax Department, etc.

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87. Plaintiff Mr. Ajay Relan filed a *Suit* CS (OS) No. 749/1994, *for Specific Performance of Agreement to Sell dated* 30.04.1993 in this Court in the year 1994, against Defendant No.1to 4 who are the Legal Heirs of late Sh. K.D. Somaia, Defendant No.5-DBPL and its two Directors, Defendant No.6- Sh.R.K. Nanda and Defendant No.7-Promila Nanda.

88. During the pendency of this Suit, in October, 2002 certain Interveners claiming themselves to be Purchasers of plots from DBPL at its Project at Okhla Enclave, filed Application with the prayer that the Suit be not decreed on the ground that property of DBPL was being siphoned off for highly undervalued sums, which ought to remain with DBPL for satisfying their claims for refunds of money paid by them for purchase of plots in DBPL, Okhla Project. The Notice was issued of the Application of the Interveners for impleadment, to Defendant No.6-Mr.R.K.Nanda.

89. According to the Applicant, Divij Mehra as Director of DBPL, on receipt of Notice of the Interveners' Application in October, 2002 and desperate for money to secure bail and to remain out of jail, Defendant No.6-Mr.R.K.Nanda, fell prey to the conspiracy designed by his Advocate Mr. Sharad Kumar Aggarwal along with Plaintiff-Ajay Relan, whereby they agreed that the Suit Property would be transferred to Ajay Relan for a highly under stated sum, by not disclosing that CECON was in possession of the property and without disclosing that Defendant No.6-Mr.R.K.Nanda had resigned from the Directorship on 19.05.1997 and had sold his entire shareholding in favour of Mr. Arun Mehra and could no longer represent Defendant No.5-DBPL.

90. Application under Order XXXIII CPC dated 30.10.2002 was filed

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after obtaining the certified true copy of the Title Deeds from DDA, wherein it was set out that out of balance amount of Rs.1.80 crores, Rs.1.70 was agreed to be paid to Defendant No.5-DBPL and remaining amount of Rs.10 Lacs to be paid to *Kumar Industrial Syndicate*, a Firm which turned out to be owned by Sh. Sharad Kumar Aggarwal, Advocate of Defendant No.5-DBPL.

91. As per *Clause-5* of the *Compromise Application,* it was further agreed that after receipt and payment of balance Rs.1.8 crores, the possession of the entire property shall be handed over to Ajay Relan, except one room on the First Floor.

92. The Compromise was accepted and the Application was allowed on 20.11.2002, after recording that the sums would be deposited by the Plaintiff in the Bank Account No.372 of Defendant No.5-DBPL in Vijaya Bank, whose operation had been frozen by the Order of this Court.

93. It was further recorded that parties had agreed that on Plaintiff-Ajay Relan handing over of the Bank Drafts to the Defendant No.5-DBPL, it would get the premises vacated from the "*tenant*" who was in occupation of the property as on that date, within one month and the matter was listed for 19.12.2002.

94. ***IA No. 11117/2002,*** was filed on 19.12.2002 by Defendant No.5-DBPL seeking correction of Order dated 19.11.2002, whereby the word "*tenant*" was sought to be replaced by the term "*occupier*". The same was allowed and time for handing over the possession of the First Floor, was extended by one month. It was also directed that the Title Deeds and other documents, shall also be handed over to the Plaintiff.

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95. The possession of the Suit Property (except First Floor) was handed over on 26.11.2002 by Defendant No.6 Sh. R.K. Nanda, acting on behalf of Defendant No.5-DBPL, while an Undertaking was given to hand over the possession of the First Floor by 19.12.2003.

96. The parties appeared before the Court on 23.03.2003, wherein the Bank Drafts in the total sum of Rs.1.80 Crores were handed over.

97. The Court recorded the compromise and also that the entire First Floor shall be handed over within one month. The Consent Decree was accordingly passed on 28.03.2003.

98. Execution Petition No.321/2003 was filed by Plaintiff-Ajay Relan **on 12.11.2003** *inter alia* seeking Police Assistance for getting the possession of the First Floor.

99. Despite having entered into compromise with the Plaintiff, Defendant No.5-DBPL through Sh.R.K. Nanda filed CS(OS) NO.961/2004, seeking a Declaration that the Agreement dated 30.04.1993 with Arun Mehra, for sale of his Share-holding, be declared null and void.

100. In the said Suit, on 10.11.2006, Defendant No.6- Sh. R.K. Nanda through his Counsel stated that he would not sell or alienate any immovable property or the shareholding of DBPL. However, he sought the permission to execute the Sale Deed in favour of a different person, who had obtained Orders from Punjab and Haryana High Court and the Hon'ble Supreme Court in respect of the Colony Edinburg City. Defendant No.6- Sh. R.K. Nanda was permitted to execute the Sale Deeds with direction to provide an affidavit with details, names and other information in respect of the parties in whose favour the Sale Deeds were to be executed, a week prior to the

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execution of the Sale Deeds and give particulars of the plot sold and the sale considerations received.

101. The said Suit however, was dismissed *vide* Order dated 30.01.2009, for want of evidence.

102. Not only this, in 2005, one Mrs. Manjeet Kaur, alleging herself to be the Owner of *Kumar Security Syndicat*e, filed Winding Up Petition against Defendant No.5-DBPL alleging that it is not paid the sums for Security Services. The Winding Up petition Company Petition No. 238/2005 was admitted in 2005. However, the Hon'ble Company Judge on the Application of Mehras' reopened the matter and found that there was no person in the name of Ms. Manjit Kaur and the Winding up Order had been obtained by fraud, therefore M/s DBPL came out of Winding Up on 03.10.2008.

***Grounds Of Challenge to Compromise Decree Dated* 28.03.2003:**

Application is barred by Res-judicata

103. A ***preliminary Objection*** has been taken on behalf of the Plaintiff, Ajay Relan that this Application to challenge the Compromise decree, is barred by **res-judicata**.

104. It is stated that CECON through its Managing Director, Arun Mehra filed a *Suit CS(OS) No.1358/2005* on 23.09.2005 seeking cancellation of the Agreement to Sell dated 30.04.1993 executed between DBPL and the Plaintiff . The Suit was rejected under Order VII Rule 11 CPC vide Order dated 16.05.2007.

105. However, the said Suit was filed by CECON through Arun Mehra as its Director, wherein the Agreement to Sell dated 30.04.1993 between DBPL through R.K. Nanda and Plaintiff-Ajay Relan was sought to be

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avoided on the grounds that CECON had been put in possession of the First Floor and handed over the original title documents, by DBPL. It was asserted on behalf of the CECON that they have acquired a title in the suit property, but in the Judgment dated 16.05.2007 the claims of CECON based on their possession of First Floor and possession of title documents, were rejected.

106. It is evident from the judgment dated 16.05.2007 that the challenge raised by CECON was not on behalf of DBPL and the grounds of challenge were also in regard to the independent title of CECON. The issue of Compromise Decree being vitiated by fraud was neither raised nor is there any finding in the said judgment in regard to the alleged fraud in obtaining the Consent Decree.

107. Thereafter, the objections were filed on behalf of CECON Ltd. on 30.10.2004 in *Execution Petition No.321/2003* on the similar grounds on which the Suit had been filed by them, but it also met the same fate.

108. Likewise, *CS(OS)1136/2005* filed on behalf of Arun Mehra was to seek a Declaration in respect of validity of the Share Agreement dated 19.05.1997 between him and Nandas'. Herein again, not an iota about the alleged Decree being fraudulent was either raised or determined.

109. In the two litigations undertaken before the Company Law Board also pertained to the validity of the Agreement of 1997, wherein Arun Mehra has asserted his right to be the Director of DBPL. None of the litigation dealt with the Compromise Decree been fraudulent, which is the ground raised in the present Application. *Therefore, there is no Order, wherein the plea of alleged fraud in entering into the Compromise Decree*

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has been considered or determined, on merits. Though multiple litigations have been undertaken, but this aspect never got adjudicated in any of the litigation and, therefore, the present Application cannot to be said to barred by *res judicata*.

Application Barred Under Order II Rule 2 CPC:

110. The ***second preliminary objection*** taken is that this Application is barred by Order II Rule 2 CPC on the ground that no liberty was taken by the Applicant while withdrawing the previous Application I.A. No.18011/2014 seeking the same relief. Hence, the Application is barred under Order II Rule 2 CPC .

111. Application **I.A. No. 18011/2014** *w*as filed by Mr. Divij Mehra, son of Mr. Ajay Mehra, seeking recall of Compromise Decree/ Judgment dated 28.03.2003. This Application was **withdrawn vide Order dated 01.10.2014** on the grounds of bringing additional facts on the record. This Court vide Order dated 01.20.2014 permitted the withdrawal by observing as follows:

> *"1. Learned counsel for applicant/Defendant no.5 states that numerous facts have come to the knowledge of the applicant and the applicant seeks* ***permission to withdraw lA No.18011/2014.***
>
> *2.* ***Since application was listed only for preliminary hearing, no permission is required. The application is dismissed as withdrawn****.*
>
> ***3. Pending applications also stand disposed of.****"*

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112. Thereafter, the present Application I.A. No. 20535/2014 has been promptly filed on behalf of Defendant No.5-DBPL on 13.10.2014 through Mr. Divij Mehra, its Director. There was no adjudication on merits on this Application. Moreover, it is evident from the aforesaid Order that permission was sought to file the Application afresh, but it was held to be unnecessary. It cannot, therefore be said that the present Application is barred under Order II Rule 2 CPC.

Application under Order XXIII Rule III filed for Compromise Decree did not bear the signature of all the Parties:

113. The other ground on which the Compromise Decree is claimed to be vitiated is that the Application under Order XXIII Rule III filed for Compromise Decree, did not bear the signature of the four legal heirs of K.D. Somaia and the signatures of Defendant No.7 Promila Nanda were forged on the said Application.

114. It is pertinent to note that the legal heirs of K.D. Somaia had only been arrayed as proforma party being the erstwhile owners from whom the property had been purchased by DBPL by virtue of Agreement to Sell and other documents, dated 30.04.1993. The legal heirs did not contest the Suit or questioned the Agreement to Sell executed by K.D. Somaia in favour of DBPL and they were not necessary for the Compromise which got executed between the Plaintiff and DBPL.

115. Furthermore, though it is asserted that signatures of Promila Nanda were forged on the Application, but it is merely a claim which is not supported by any cogent evident. Promila Nanda has never come forth to

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question the Compromise Application or the consequent Compromise Decree.

116. In this context it is pertinent to note that the actual party was DBPL who was being represented through its two Directors R.K. Nanda - Defendant No.6 and Promila Nanda – Defendant No.7. The Settlement/Compromise was for and on behalf of DBPL and, therefore, the signatures on behalf of the Company had been validly made by R.K. Nanda as its Director. The contention that the Application was not signed by all the parties is, therefore, without merit.

Lack Of Diligence on the Part of Ajay Relan:

117. *Another ground* raised to claim fraud was that the Plaintiff Ajay Relan was residing in the same vicinity and would be necessarily crossing the suit property regularly and would have noted that the First Floor of the property in question was in possession of CECON. A question is raised that no rational person would buy a property which is in possession of third party. However, this again is an absolutely baseless ground for the simple reason that even if part of the property was in possession of third party, a *bona fide* person may not be desisted to purchase this property especially when the Agreement to Sell on behalf of DBPL was executed through R.K. Nanda, who was admittedly the Director of DBPL at that time and was competent to do so.

118. Connected to this a plea was taken that in the Compromise Agreement it was recorded that the original title documents have been handed over to Ajay Relan, when in fact to the knowledge of DBPL the original title

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documents were in possession of CECON. Though, it may have been recorded that the original title documents would be handed over to the Plaintiff despite they not in possession of R.K. Nanda, but that was a risk taken by the Plaintiff while purchasing the property of which he has suffered the consequence of facing the litigation since 1994. The Plaintiff may have chosen to take a risk, but that in itself would not make the transaction fraudulent especially when he purchased the property for a sale consideration of Rs.2.40 Crores.

Compromise Decree Dated 28.03.2003 is vitiated by Fraud as there was No right/ Authority with Mr. R.K. Nanda to Enter into the Compromise Decree, on behalf of DBPL:

119. The ***main ground to challenge the Compromise Decree*** *dated 28.03.2003 is that it is vitiated by fraudulent.*

120. It is submitted that Defendants No.5 & 6 - R.K. Nanda and Promila Nanda entered into an Agreement dated 19.05.1997 with Mr. Arun Mehra, under which they transferred their 100% shares in the Company i.e. DBPL in favour of Mr. Arun Mehra. Not only this, Mr. R.K. Nanda and Ms. Promila Nanda, resigned from the Board of Directors and their resignation was duly accepted by the Board of Directors and Mr. Arun Mehra was appointed as the Director and shares were also transferred to Mehras'. From that day, the control and management of DBPL passed on to Mr. Arun Mehra leaving no authority with R.K. Nanda to act for and on behalf of DBPL. Consequently, R.K. Nanda had no authority to enter into the Compromise with Ajay Relan.

121. To buttress this argument, it is stated that Defendant No.6- Sh. R.K.

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Nanda, subsequent to the filing of the Suit, even informed DDA on 22.04.1996 that he cannot act on the basis of the Power of Attorney dated 19.01.1993 issued in his favour by Guarantor late Sh. K.D. Somaia as it stood automatically terminated by operation of law, because of his demise in August, 1993. He also informed Panchsheel Corporation Group Housing Society Limited, accordingly. The contemporaneous correspondence for the same, was issued by Defendant No.6- Sh. R.K. Nanda by the letter dated 21.05.1997, to the Deutsche Bank. This information was also conveyed to the Registrar of Companies.

122. It is contended that post the resignation of Mr. R.K. Nanda and Ms. Promila Nanda as Directors, they ceased to have any authority to deal for and on behalf of DBPL with Mr. Ajay Relan or any party or enter into the Compromise Decree dated 28.03.2003 and as such, the Decree dated 28.03.2003 is a nullity and *non-est*. Consequentially, the Compromise Decree dated 28.03.2003 is liable to be set aside.

123. Moreover, in the Order dated 26.07.2013 in RFA (OS) 62/2010, arising from dismissal of CS (OS) No. 961/2004, while allowing the Appeal, it was observed that there is no controversy about the binding nature of the Share Purchase Agreement dated 19.05.1997, as between the parties in relation to the underlying transaction.

124. The Applicants have further asserted that the rights of the Applicants i.e. lawful Directors of Defendant No.5-DBPL, has been crystallized and conclusively upheld *vide* Order dated 11.03.2014 in CP No.112/2013, by the Company Law Board and actions have been thus, taken by the new Management for safeguarding the properties and interests of the Company,

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which were being siphoned off by Defendant No.6- Sh.R.K. Nanda.

125. The facts involved in the present case are simple, though have been contoured and confused by the parties over a period of time.

126. Mr. R.K. Nanda had filed a CS (OS) No. 961/2004 for *inter alia* Declaration of Share Purchase Agreement dated *19.5.1997* being null and void, wherein it was alleged that Mr. Arun Mehra was guilty of mismanagement and siphoning of funds to the tune of Rs.30 Lacs of DBPL from 1997 to 2001.

127. The said Suit was contested by Mr. Arun Mehra who made certain averments in his Written Statement (as quoted in **CLB order dated 02.02.2006 in C P. No 54/2005),** which are as under:

> *" 6. That in reference to para 6 of the plaint it is submitted that* ***agreement dated 19.5.1997 was entered between the plaintiffs and the defendant No. 1 with the sole intention of securing the substantial loan which the defendant through his group companies had advanced to the plaintiff.*** *It is submitted that the plaintiff did not in fact fulfil substantial part of their obligation under the said agreement. The only thing they did under the said agreement that the sale of shares of the plaintiff company in favour of the defendants under group companies.* ***The defendants were never put on the board of the plaintiff company****.*
>
> *7. It is denied that pursuant to the said agreement,* ***the entire assets and liabilities of plaintiff No. 1 were handed over to the defendant No. 1 and 2 "***
>
> *…….*
>
> *10. It-is submitted that the* ***question of deleting the names of the defendants from the Register of Companies does not arise as the defendants, in the first place, had never become the directors in the company*** *".*

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> *11. With reference to the present para under reply, it is submitted that the question of filing Form 32. or any other form did not arise as defendants 1 and 2 had never become the directors in the plaintiff company.* ***In fact, the defendants never functioned as directors of the company even otherwise.*** *It is rather incomprehensible to even suggest that the defendants were allowed to function as a director by the plaintiff No. 2 i.e. the Managing Director of plaintiff No. 1 without there being a valid appointment....* ***Significantly, Mr. R.K. Nanda is a permanent director of Durga Builders as per Articles & Memorandum of Association****."*

128. From these averments of Arun Mehra in his Written Statement, what emerges is that though Mr. Arun Mehra entered into an Agreement dated 19.05.1997 with Mr. R.K. Nanda and purchased the entire shareholding of the Company and resignation of Mr. R.K. Nanda was duly accepted by the Board, but Mr. Arun Mehra never in fact got himself appointed as the Director of the Company pursuant to the Agreement nor did he take over the control of the Management of the Company. *Also, according to him, the Agreement was not intended to take over the Management, but only to secure his investments in various Projects of DBPL.* Further, because of multiple criminal litigations pending against DBPL, Mr. Arun Mehra was reluctant to take over the control and management of DBPL. In fact, Mr. R.K. Nanda and Ms. Promila Nanda continued to prosecute all the cases against the Company and make the payments to the investors.

129. In this context, it is also pertinent to mention that Order dated 10.11.2006 passed in this Suit CS(OS) 961/2004 (filed by R.K. Nanda), this

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Court had permitted Mr. R.K. Nanda to execute the Sale Deed in respect of Edinberg city, Phase –I Faridabad to be executed in favour of different persons, who had obtained Orders in their favour from Punjab and Haryana High Court as also the Supreme Court. However, the said Suit was dismissed on 30.01.2009.

130. In other words, Mr. R.K. Nanda and Ms. Promila Nanda were carrying on the Management and affairs of the Company and Mr. Arun Mehra, who all throughout was aware of the entire factual situation, refused to take over the Management of DBPL. There may have been an Agreement entered into between Mr. R.K. Nanda and Mr. Arun Mehra, but it is evident that the same was never acted upon by Mr. Arun Mehra and Mr. R.K. Nanda continued to act for and on behalf of DBPL and even faced the prosecution in criminal cases and parted with huge amounts.

131. Pertinently, Mr. Arun Mehra and others, filed ***first Company Petition CP No. 54 and 59 of 2005*** before the Company Law Board, Principal Bench, against DBPL, Mr. R.K. Nanda and others *for taking over the Management of the Company and also filed suit CS(OS) No. 961/2006 for restraining Mr. R.K. Nanda from alienating any immovable property of the Company or its shareholding*. However, the Chairman, Company Law Board, Principal Bench, New Delhi observed that Mr. R.K. Nanda had faced the brunt of criminal prosecution and also made payment of Rs.25 Crores to the Investors, while Mr. Arun Mehra and others, had been shying away from facing criminal case and liabilities of the company for many years. It was concluded that Mr. Arun Mehra and others cannot seek to take over the Company when it had started making profits, as it cannot be permitted in

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equity. It was observed that Mr. Arun Mehra had not been able to establish any act of oppression or mismanagement and the *Company Petition No. 54 and 59 of 2005* was dismissed vide Order dated 02.02.2006.

132. ***A Company Appeal No. 07/2006*** was preferred against the Order dated 02.02.2006, but the same was dismissed by a reasoned Order of this Court dated 30.10.2006 wherein the Court affirmed that the Agreement dated 19.05.1997 which formed the basis of the proceedings, was not admittedly given effect to by Mr. Arun Mehra in relation to the affairs of the Company. Mr. Arun Mehra had failed to give any worthwhile explanation as to why even after having purchased the entire equity of the Company, they did not make any effort to fill the Form 32 and to take control of the Company as 100% shareholders.

133. It was further observed that Mr. Arun Mehra did not choose to adopt either course of action available to him, i.e. filling the Form 32 or taking control of the DBPL-Company raising a presumption in favour of Mr. R.K. Nanda that the Agreement was intended to secure the investments made by the Mehras' in the on-going two Projects of the Company. Accordingly, it was held that Mr. Arun Mehra, even after having got the Share Certificates duly endorsed in their favour, by not taking steps to control the two Companies, intended to retain lien over the Shares to secure their investments made in two Companies. ***The Company Appeal was accordingly dismissed.***

134. Mr. Arun Mehra preferred ***SLP (C) No. 20293/2006*** wherein the Apex Court on 15.10.2012 enquired from the Counsel for Mr. Arun Mehra whether they were willing to take over the Company along with its liabilities

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as on that date, to which his Counsel replied that if his client is made aware of the actual liability, then he may think to take over the Company. Mr. Arun Mehra avoided to respond to the query of Apex Court with regard to his taking over the Management of his Company and had shown a clear disinterest in taking over the Management.

135. It clearly emerges that though by virtue of Agreement dated 19.05.1997, the entire shares of the Company were purchased by Mr. Arun Mehra and others and the entire sale consideration for the shares was duly paid, but the inaction of Mr. Arun Mehra, who never applied to get the shares transferred in his name or move an Application before the Registrar of Companies for entering their names in the Register of Company, clearly points out that his intention was to only to secure the investments made by him and Mr. Divij Mehra (his son) and he never intended to take over the Management of DBPL.

136. Interestingly, while on one hand Mr. Arun Mehra was refusing to take over the Management, he filed *CS (OS) No. 354/2009 for Mandatory and Permanent Injunction against Nanda's* from acting on behalf of or alienating the assets of the Company in which *vide* Order dated 20.02.2009. It was held by the Court that since the Plaintiffs i.e. Mr. Arun Mehra and others slept over their rights for a long time and that since the Suit was instituted after the period of limitation and no defence to explain limitation was set up, **the Suit was dismissed.**

137. In ***RFA (OS) 62/2010***, the Division Bench of this Court *vide* Order dated 26.07.2013 directed the parties to maintain *status quo* in respect of the property which was subject matter of the Appeal, as there was a subsisting

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Order of the Apex Court and observed that there was no controversy about binding nature of the Agreement dated 19.05.1997.

138. The matter did not rest, but ***second Company Law Board Petition CP No. 112/2013*** was filed by Mr. Arun Mehra and Ms. Seema Mehra. Hon'ble Member, Company Law Board, New Delhi in the Final Order noted that since in the aforesaid litigation, Respondents-Mr. R.K. Nanda and Ms. Promila Nanda, have been restrained from functioning on behalf of the DBPL and as the share holding of the Petitioners is in dispute, it was held to be in the interest of justice for the appropriate functioning of DBPL, names of Arun Mehra and Ms. Seema Mehra were directed to be noted in the Register of Members showing their respective share holding, within two weeks and also directed that a Meeting of Shareholders be convened. The said Petition was accordingly, allowed. Consequently, their names have been added in the Register of Members.

139. From the above discussion, it is evident that even though the Agreement for Transfer of Shares had been entered into between the parties on 19.05.1997 but Mr. Arun Mehra refrained himself from taking over the Management of *DBPL* and the same continued to be with Mr. R.K. Nanda and Ms. Promila Nanda who continued to represent the Management of the Company in civil as well as criminal litigations.

140. Mr. Arun Mehra was well aware of the Management of the Company being dealt by Mr. R.K. Nanda and Ms. Promila Nanda, despite which he failed to take over the Management of DBPL. Rather, he categorically refused to take over the Management on account of numerous criminal proceedings and civil litigations.

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141. It is abundantly established on record that even though Share Agreement dated 19.05.1997 was entered into between R.K. Nanda and Mr. Arun Mehra, but it was never acted upon insomuch as Mr. Arun Mehra and others never applied for transfer of shares in their names, despite the original Shares Certificates were handed over to Mr. Arun Mehra. Also, Mr. Arun Mehra and others did not apply to get their names entered into the Register of Members. Clearly, from the year 1997 till passing of the Order dated 11.03.2014 passed in Company Law Board Petition, whereby names of Mr. Arun Mehra and Mrs. Seema Mehra, were directed to be added; Mr. R.K. Nanda and Ms. Promila Nanda continued to represent DBPL, which cannot be termed without any authority or *non est*.

142. From the aforesaid discussion, what follows is that Sh. R.K. Nanda was fully competent to enter into the compromise with Ajay Relan, the plaintiff in CS (OS) 749/1994, for which ***IA No. 10189/2002,*** under Order XXIII and Rule 3 CPC read with Section 151 CPC was filed. *vide* Order dated 20.11.2002 it was observed that the parties have amicably arrived at a settlement. It was observed that the parties had arrived at a settlement and the amount was directed to be deposited in account number of Defendant No.5 in Vijaya Bank, Greater Kailash, New Delhi, which was lying frozen. Two bank drafts amounting to Rs.10 Lacs and Rs.1.70 crores, were handed over to be deposited in the account of Defendant No.5- DBPL. Subsequently, *vide* Order dated 28.03.2003, statement of Mr. R.K. Nanda, Managing Director of DBPL and Ajay Relan was recorded and the compromise decree was accordingly passed.

143. Pertinently, this Agreement to Sell with Ajay Relan was executed in

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1992 when R.K. Nanda was admittedly, Director of DBPL. The Suit was also filed in 1994, when also R.K. Nanda was admittedly, director of DBPL. Admittedly, the entire sale consideration that was due and payable under the original Agreement to Sell dated 30.04.1993, ***was credited to the account of the Company and not to the account of Mr. R.K. Nanda.*** The acts of Mr. R.K. Nanda, therefore, cannot be questioned as it was only the execution and implementation of the Agreement to Sell which was duly entered into on behalf of DBPL. Not only this, it is also established that R.K. Nanda had full authority to enter into the Compromise with Ajay Relan.

144. A connected argument was raised of conspiracy between Sh. Sharad Kumar Aggarwal, the Advocate and R.K. Nanda as Rs. 10lacs were transferred to his Firm. However, as the Counsel, he was entitled to his Fee and credit of this amount to his account, cannot be termed as any conspiracy or fraud.

145. It is abundantly clear that Mr. R.K. Nanda had been acting for and on behalf of the Company as its Managing Director till 11.03.2014 when the Company Law Board directed the names of Mr. Arun Mehra and others to be entered into the Register of Members. Record establishes that Mr. R.K. Nanda had continued to act as the Managing Director of the Company all throughout, which was with the knowledge of Mr. Arun Mehra who never made an effort to take over the charge of the Company. Pertinently, if Mr. R.K. Nanda had not continued to work and act on behalf of the Company, there would have been a vacuum and the entire business would have collapsed. Therefore, the acts of Mr. R.K. Nanda for and on behalf of the Company, cannot be termed beyond the Authority.

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146. The Applicant's reliance on *Mehboob Sahab* (supra); *Ram Chandra Singh* (supra); *Hamzi Haji* (supra); *A.V. Papayya Sastry & Ors.* (supra); *Ram Kumar* (supra); *Bilkis Yakub Rasool* (supra); *Devas Multimedia Pvt. Ltd.* (supra); and *SP Chengalvaraya* (supra) to state that Fraud vitiates all proceedings, does not aid their case.

147. It is hereby concluded that ***no fraud, is borne out from the record and the Compromise Decree is Valid.***

Title of Sh. Arun Mehra on the basis of Will dated 03.02.1993:

148. The Applicant has made a reference in the Written Arguments that Sh. K.D. Somaia executed a Power of Attorney dated 29.01.1993 in favour of Sh. R.K. Nanda in respect of the Suit properties, though no Will was executed in his favour. Instead, on the request of Sh. R.K. Nanda, Sh. K.D.Somaia executed the Will dated 03.02.1993, in the name of Mr. Arun Mehra, Director of CECON.

149. In August, 1993 Sh. K.D. Somaia died and Mr. Arun Mehra, by virtue of Will dated 03.02.1993, became the owner of the property and is in possession of the First Floor since February, 1993 through CECON, in which he is the Managing Director.

150. The Applicant has asserted that Sh. R.K. Nanda wrongly entered into compromise with the plaintiff, for a consent decree for execution of sale Deed on the ground that despite being aware that Sh. Ajay Mehra was the Owner of the property by virtue of the Will of late Sh. K.D.Somaia, which fact was intentionally and deliberately concealed and not disclosed in the Suit by Defendant No.6- Sh. R.K. Nanda. Also, deliberately and intentionally, CECON was not made a party to the proceedings.

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151. Even though it is asserted that Sh. Arun Mehra became the owner of Suit Property by virtue of the Will dated 03.02.1993, but it cannot be overlooked that even if this contention is accepted the property would come to Sh. Arun Mehra with the lien which got created in respect of suit property by Sh. K.D. Somaia, during his Lifetime.

152. Moreover, a Local Commissioner was appointed to ascertain the possession of the Suit Property, who *vide* Report dated 13.07.1994 revealed that CECON employees were in possession of First Floor of the Suit Property, even though the name of the CECON was not specifically mentioned in the Report. Undeniably, Sh. Arun Mehra was the Director of CECON, and would have become aware of the pending Litigation.

153. Even thereafter, CECON filed Suit CS(OS) No.1358/2005 challenging the Compromise Decree which was dismissed on 16.05.2007 by this Court by observing that the issues raised in the Suit, could be raised by it in the capacity of Obstructionist in the Execution Petition.

154. CECON, who was in possession of the First Floor, filed its Objections as obstructionist on 30.10.2004, in the **Execution Petition No.321/2003**, which were dismissed by this Court on 04.01.2008.

155. CECON preferred EFA bearing No. EFA(OS) No. 5/2008 on 02.02.2008 wherein the Division Bench passed the Order of *status quo* in respect of the Suit Property vide its Order dated 07.04.2008. CECON preferred IA No. 12124/2014 in EFA(OS) No. 5/2008 alleging that Ajay Relan, the Decree Holder was misleading the Court on numerous grounds.

156. However, Defendant No.5-DBPL filed IA No.11609/2014, wherein it set out the position qua the EFA on record and annexed all the relevant

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Orders, including the Order dated 11.03.2014 of the Company Law Board.

157. The chain of events and litigation undertaken on behalf of CECON, makes it abundantly clear that Sh. Arun Mehra was well aware of pending litigation in regard to the Suit property, at least in 1994 and even thereafter, in 2005 when it filed the Suit in 2005 to challenge the Compromise Decree. However, all throughout, while questioning the Authority of Sh. R. K. Nanda to enter into Compromise Decree on behalf of DBPL, but he never asserted any right on the basis of alleged Will in his favour. Here also, the Compromise Decree is not sought to be avoided on this ground of alleged ownership.

158. This ground of title on the basis of Will, even if accepted, could have been agitated within three years of the knowledge of execution of Conveyance Deed on 23.07.2010, or even prior thereto when he became aware of the ownership rights being claimed by the Plaintiff, but he has failed to do so till date.

159. Section 27 of *Limitation Act, 1963* reads as under:

> *"27. Extinguishment of right to property.— At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."*

160. According to Section 27 of the *Limitation Act, 1963*, at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Section 27 of the *Limitation Act* is the only provision which

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extinguishes the right to property if not challenged within limitation, while all other sections of Limitation Act, merely make the remedy barred by Limitation.

161. Division Bench of this Court in the case of *Sanjay Roy vs. Sandeep Soni*, 2022 SCC OnLine Del 1525 followed the judgment of *Ramti Devi vs Union of India* (1995) 1 SCC 198, wherein it was observed that *"..until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the suit necessarily has to be laid within three years from the date when the cause of action had occurred..."*

162. In the case of *Lata Chauhan vs L.S. Bisht & Ors* 2010 (117) DRJ 715 this Court had observed that where the Plaintiff has failed to seek appropriate relief of Declaration or alternatively, cancellation of the Registered Lease deed, such relief cannot be granted, because the period of limitation prescribed in this regard by Articles 58 and 59, mandates that suits in regard to such declaration are to be instituted within three years after the cause of action arises. As the plaintiff did not file the suit within time, it is time barred. The Court further applied Section 27 of the *Limitation Act* to the facts of the case and observed that if the plaintiff had a cause of action to seek cancellation of the Registered Lease Deed or to seek an appropriate declaration, it was extinguished after the expiry of three years from the date of registration of the document. Therefore, a registered conveyance deed in favour of a party if not challenged within the prescribed period limitation under Article 59 of the *Limitation Act, 1963,* would vest absolute ownership rights in the property.

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163. It is pertinent to note that the alleged Will dated 03.02.1993 of K.D. Somaia to which a reference has been made by the Applicant, was a set of documents namely Agreement to Sell, GPA etc by virtue of which the property got sold by K.D. Somaia to DBPL.

164. It was not a stand alone document. It is also pertinent to note that though Applicant had claimed that this document had been concealed by Ajay Relan as well as by R.K. Nanda but CECON of which Arun Mehra was a Director had asserted in his Suit as well as in the Objections filed on behalf of CECON in Execution Petition that the entire set of title documents had been handed over to them. If so was the case, then the Will would have automatically been in possession of CECON of which Arun Mehra was the Director. His assertion that he was not aware of the Will or that it was fraudulently concealed by the Plaintiff or R.K. Nanda, is a blatant falsehood which is not supported by the record.

165. It would not be out of place to observe that if this line of argument is accepted, then even the Applicant-DBPL through Sh. Divij Mehra, who is asserting property rights on behalf of DBPL, would lose the entire foundational basis to challenge the Consent decree. If according to his contention, it is accepted that Sh. Arun Mehra had acquired ownership rights, then the entire edifice of Claim on behalf of DBPL through Divij Mehra as the owner, would crumble and the Objections to Consent Decree would be liable to be rejected completely.

166. Therefore, this ground to avoid the Compromise Decree, is not tenable.

167. ***DBPL Was Not the Owner but GPA Holder of K.D. Somaia on***

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whose Behalf the Conveyance Deed was Executed in favour of Plaintiff:

168. It is asserted that subsequently, it came to the knowledge of the Applicant that a fraud has been committed in so much as the Conveyance Deed in favour of Ajay Relan has been executed on the basis of a GPA of K.D. Somaia. Significantly, K.D. Somaia has not made any claim to the ownership of the suit property and had also not challenged the transaction of 1992 vide which he sold the property to DBPL. The entire sale transactions by K.D. Somaia and thereafter, by DBPL has been done through Agreement to Sell, etc. and no Sale Deed executed in favour of DBPL, but it had GPA of K.D. Somaia, in its favour. Therefore, necessarily, the Documents in favour of Ajay Relan were validly executed by R.K. Nanda, on the basis of GPA in his favour.

169. After the Compromise Decree was passed on 28.03.2003, the Execution got filed, wherein by the Orders of the Court, the Sale Deed was directed to be executed. Since, it was the sale transaction on the basis of Agreement to Sell, GPA, necessarily a Conveyance Deed instead of Sale Deed had to be executed.

170. Thereafter, *the Conveyance Deed got executed on 23.07.2010* in favour of Plaintiff, by the Orders of the Court in the Execution Petition which was not disturbed in the Appeal preferred in EFA (OS) No.5/2008 wherein it was observed that the Sale Deed may be executed subject to the condition that in case the objections are decided in favour of CECON, the Sale Deed shall be cancelled.

171. Therefore, it is evident that there was no fraud in the execution of Conveyance Deed in favour of Ajay Relan, which was done pursuant to the

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directions of the Court.

Agreement to Sell with Ajay Relan was for insufficient Sale Consideration:

172. Another ***specious ground*** to challenge the Compromise Decree that has been taken on behalf of the Applicant, is that the property had been purchased by DBPL for a sale consideration of Rs.2 Crores while after 10 years, the property got sold to Ajay Relan by DBPL for Rs.1 Crore 80 Lacs i.e. at a much less price, when in fact on that day the market value of the property was about Rs.8 Crores.

173. Pertinently, this contention is contrary to the facts. The property had been purchased by DBPL by virtue of Agreement to Sell of 16.09.1992, for Rs. 2 Crores from K.D. Somaia. It is not in dispute that the Company was facing multiple civil and criminal litigation and was having financial difficulties which according to R.K. Nanda, compelled him to sell this property to Ajay Relan by virtue of Agreement to Sell dated 30.04.1993 (i.e. within one year) for a sale consideration of Rs.2.4 Crores, out of which Rs.60 lacs was paid initially and the balance Rs.1.8 Crores was paid subsequently at the time of execution of the Compromise. The sale has been made not after ten years, but barely after one year and that too, at an enhanced sale consideration of Rs.2.4 Crores.

174. Therefore, the contention that the property got sold at a much lesser price after ten years, is totally fallacious.

Conclusion:

175. In view of the above discussion, it is held that there is no merit in the Application preferred by Mr. Divij Mehra on behalf of DBPL, which is

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hereby dismissed.

I.A. 20536/2014, I.A. 20537/2014, I.A. 20539/2014, I.A. 20540/2015, I.A. 21460/2014, I.A. 21462/2014, I.A. 7353/2020 and **I.A. 2487/2022**

176. In view of the decision in I.A. No. 20535/2014 the present Applications have become infructuous and are accordingly disposed of.

EX.P. 92/2019, EX.APPLN. (OS) 682/2020; EX. APPLN.(OS) 3214/2022; EX.APPL.(OS)3619/2022 AND EX.APPL.(OS) 3620/2022

177. List before the Roster Bench on 08.04.2025.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 17, 2025
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